

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WILLIAMS

NORTHWEST JUDICIAL DISTRICT

WILLISTON PUBLIC SCHOOL)
DISTRICT NO. 1, et al.,)

Plaintiffs,)

vs.)

STATE OF NORTH DAKOTA; et al.,)

Defendants.)

**AGREEMENT TO
STAY LITIGATION**

Civil No. 03-C-507

A. Parties

This Agreement to Stay Litigation (Agreement) is made and entered into by and between the Plaintiffs and Defendants as identified in the caption of the Amended Complaint.

B. Recitals

The following recitals form the basis of this Agreement:

1. On October 10, 2003, plaintiffs served a Summons and Complaint upon the defendants (this Action). The Complaint was amended by Stipulation to Amend Complaint dated December 16, 2003, and Order entered December 23, 2003. The Amended Complaint requests declaratory judgment declaring that the North Dakota public school finance system for elementary and secondary schools violates the North Dakota Constitution.

2. The Defendants have denied and continue to deny Plaintiffs' claims that the North Dakota public school finance system for elementary and secondary schools violates the North Dakota Constitution.

3. The parties have each determined independently that it is desirable and beneficial for them and for the citizens of the State of North Dakota to stay this Action and provide the North Dakota Legislative Assembly the opportunity to settle, compromise, and resolve this Action in the manner and on the terms and conditions set forth in this Agreement.

C. Agreements

The undersigned parties agree to stay this Action on the terms and conditions set forth in this Agreement, and agree that:

1. This Agreement is a compromise of doubtful and disputed claims, and the existence of this Agreement and its terms may not to be construed as an admission on the part of the Defendants of any of the allegations in the Amended Complaint. The Defendants deny the allegations in the Amended Complaint and merely intend to avoid further litigation. Neither can this Agreement be construed as a change of position by the Plaintiffs. Plaintiffs continue to stand by each and every allegation in the Amended Complaint and merely intend to avoid further litigation.

2. The parties agree that the existence of this Agreement and its terms may not be used as evidence in this Action or any other action involving any of the parties to this Agreement.

3. Upon the execution of this Agreement, the Governor will issue an Executive Order, in the form attached as Exhibit A to this Agreement, creating a North Dakota Commission on Education Improvement (Commission).

4. The parties agree that any statements, actions, reports, recommendations, or decisions of the Commission, and its members in their capacity as members of the Commission, shall not be considered admissions by any party.

5. The proposed Executive Budget for the 2007 legislative session will include at least \$60 million of additional state funds for elementary and secondary education programs over the amount appropriated by the 2005 Legislative Assembly.

6. The parties acknowledge that the Executive Budget constitutes a proposed budget by the Governor to the North Dakota Legislative Assembly, and that the Executive Budget is not binding on the North Dakota Legislative Assembly. The parties specifically acknowledge that the North Dakota Legislative Assembly determines the final budget for the State of North Dakota.

7. The parties agree that any and all claims in this Action as set forth in the pleadings against the Defendants shall be stayed until the close of the 2007 legislative session. The attorneys shall file the Stipulation for Stay and an Order for Stay in substantially the same forms as Exhibit B and Exhibit C attached hereto.

8. Plaintiffs waive any claims they may have against the Defendants for recovery of their costs and attorneys' fees incurred in this Action through the date of Plaintiffs' execution of this Agreement.

9. The parties agree that at the close of the 2007 legislative session, plaintiffs will dismiss this Action without prejudice if the 2007 North Dakota Legislative Assembly ratifies this Agreement by (1) appropriating at least \$60 million of additional state funds for elementary and secondary education programs over the amount appropriated by the 2005 Legislative Assembly; and (2) passing a resolution adopting the North Dakota Commission

on Education Improvement as a vehicle for proposing improvements in the system of delivering and financing public elementary and secondary education. The parties further agree that the dismissal without prejudice will be without costs, disbursements, or attorneys' fees to any party.

10. If the conditions of paragraph C(9) are met and this Action is dismissed without prejudice, the plaintiffs agree that they will not commence another action based upon the same or similar allegations in the Amended Complaint until at least after the close of the 2009 legislative session.

11. There are no covenants, promises, undertakings or understandings outside of this Agreement other than as specifically set forth herein.

12. Each of the undersigned parties acknowledge that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted. Each of the undersigned parties also acknowledge and represent that they have been represented by counsel in connection with their respective considerations and the execution of this Agreement. Each of the undersigned parties further represent and declare that in executing this document they have relied solely upon their own judgment, belief, and knowledge and the advice and recommendation of their own independently selected counsel concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing this document by the representations or statements except those referred to or contained in this document.

13. By signing this Agreement, the undersigned superintendents acknowledge that they have authority to sign this Agreement on behalf of their respective school boards.

14. This Agreement shall be governed by the substantive laws of the State of North Dakota.

Dated this _____ day of _____, 2005.

Crowley, Haughey, Hanson,
Toole & Dietrich P.L.L.P.

State of North Dakota
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Attorneys for Defendants.

Williston Public School District No. 1

State of North Dakota

By: _____
Warren Larson, Superintendent

By: _____
John Hoeven
Governor

By: _____
Gene A. Johnson, for and on behalf of
himself and his children, K. J. J.
and B.C. J.

State of North Dakota
Department of Public Instruction

By: _____
Wayne G. Sanstead
Superintendent

By: _____
Tamara J. Johnson, for and on behalf of
herself and her children, K. J. J.
and B.C. J.

State of North Dakota
Treasurer

By: _____
Kelly L. Schmidt
Treasurer

By: _____
Jeff L. Nehring, for and on behalf of
himself and on behalf of his children, C.N.
and C.N.

State of North Dakota
Office of Management and Budget